### FEDERAL ELECTION COMMISSION 999 E Street, N.W. Washington, D.C. 20463

### FIRST GENERAL COUNSEL'S REPORT

MUR: 6088

DATE RECEIVED: October 6, 2008
DATE ACTIVATED: March 17, 2009

**EXPIRATION OF SOL: October 1, 2013** 

COMPLAINANT:

Richard Van Luvender

RESPONDENT:

Haverford Township Democratic Committee

**RELEVANT STATUTES:** 

2 U.S.C. § 431(9)(B)(viii)

2 U.S.C. § 441d(a) 2 U.S.C. § 441i(b) 11 C.F.R. § 100.26 11 C.F.R. § 100.80 11 C.F.R. § 100.87 11 C.F.R. § 100.140 11 C.F.R. § 100.147

11 C.F.R. § 110.11

**INTERNAL REPORTS CHECKED:** 

None

FEDERAL AGENCIES CHECKED:

None

### I. INTRODUCTION

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- 2 Complainant asserts that Respondent Haverford Township Democratic
- 3 Committee ("the Committee") violated the Federal Election Campaign Act of 1971, as
- 4 amended, ("the Act") by using \$1,480.60 in nonfederal funds to pay for a newsletter that
- 5 endorsed federal, state, and local candidates and failing to include requisite federal and
- 6 state disclaimers on the newsletters and the Committee's website.
- 7 Respondent requests the Commission dismiss the matter because (1) the
- 8 newaletter is exempt party activity that may be paid with nonfederal funds; (2) the

- newsletter contains an appropriate federal disclaimer; (3) the website and online
- 2 contribution form do not require a federal disclaimer because neither contain political
- 3 information about, nor solicit contributions for, federal candidates; and (4) the
- 4 Commission does not have jurisdiction over Pennsylvania election laws. MUR 6088
- 5 Response.

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For the reasons set forth below, we are recommending that the Commission find no reason to believe that Respondent violated the Act.

### 8 IL FACTUAL AND LEGAL ANALYSIS

### A. Factual Background

Respondent, Haverford Township Democratic Committee, is a local political party committee in Pennsylvania. The Committee does not have a federal account and is not registered with the Commission. In September 2008, the Committee ordered 20,000 newsletters, at the cost of \$1,480.60, that contained information about federal, state, and local Democratic Party candidates. See MUR 6088 Response (Attach. 1). Committee volunteers distributed the newsletters before the election in November. Id. at 2.

The newsletter urges voters to elect two federal and three nonfederal Democratic candidates and includes material on the candidates' positions, biographical information, previous legislative accomplishments, and features statements each candidate has made on a selected issue. MUR 6088 Complaint (Attach. 1). The newsletter also provides voting information, including the voter registration deadline, absentee ballot information, and the date of the general election. *Id.* (Attach. 1). A disclaimer at the bottom of the

<sup>&</sup>lt;sup>1</sup> The candidate statements include: "Barack Obama on Economic Prosperity;" "Congressman Joe Sestak on Health Security;" "State Rep. Daylin Leach for State Senator on Education Equality;" "State Representative Greg Vitali on Environmental Responsibility;" and "Dan Siegal for 4th Ward Commissioner on Integrity." MUR 6088 Complaint (Attach. 1).

- newsletter reads, "Paid for by the Haverford Township Democratic Committee" and
- 2 includes the link for the Committee's website (www.HaverfordDemocrats.com). Id.
- 3 (Attach. 1).
- 4 The Committee website includes voter information, a calendar of events, and
- 5 links to the Democratic National Committee's website and the websites of specific
- 6 Democratic Party candidates. See http://www.haverforddemocrats.com. Respondent
- 7 asserts that its website "does not contain any political information on federal candidates."
- 8 MUR 6088 Response at 2. At the time Complainant filed the complaint with the
- 9 Commission, this website did not include a disclaimer. Id. at 2 (stating "[the] webpage
- does not include a statement that the web page was paid for by the [Committee]. It is
- obvious that the Haverford Township Democratic Committee pays for its own web page.
- 12 .."). A disclaimer has since been added to the website. See
- 13 http://www.haverforddemocrats.com (stating "Paid for by the Haverford Township
- 14 Democratic Party Committee") (last visited June 9, 2009).
- 15 Finally, the Committee's website includes a link to "Contribute." See id. The
- 16 ensuing webpage provides a physical address for contributions via check as well as an
- 17 option to make contributions online. The Complaint asserts that the online contribution
- 18 page violates the Act because it does not include disclaimers that the Committee is
- 19 raising funds for federal candidates nor information about applicable federal contribution
- 20 limits. MUR 6088 Complaint. Respondents assert that the website does not raise funds
- 21 for any federal candidate. MUR 6088 Response at 2.

### B. Analysis

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We conclude that Respondents have not violated the Act. Although the
newsletter does not qualify for the slate card exemption claimed by Respondents, it
nevertheless can be paid for with nonfederal funds under the volunteer materials
exemption. The newsletter contains an appropriate disclaimer. Further, because the
Committee website and online contribution form contain no information about, nor solicit
contributions for, federal candidates, they do not require a disclaimer. Finally, the
Commission does not have jurisdiction over Pennsylvania state election laws.

### 1. Slate card exemption

While Respondent asserts that the newsletter could be paid for with nonfederal funds under the slate card exemption, we disagree. Under the Act, expenditures by state and local political party committees of the costs incurred to prepare, display, mail, or otherwise distribute a printed slate card, sample ballot, or "other printed listing(s)" of three or more candidates for any public office who are to be elected in the relevant state are exempt from the definitions of "contribution" or "expenditure." 2 U.S.C. § 431(9)(B)(viii); 11 C.F.R. §§ 100.87 and 100.147.

Materials subject to the slate card exemption, however, may only include basic candidate and voting information such as allowing (1) information identifying candidates by name or by means of a picture; (2) the office or position currently held by the candidates; (3) the elective office being sought by the candidates; (4) party affiliation; and (5) voting information, such as the time and place of an election and instructions on the method for voting a straight party ticket. Advisory Opinion 2008-06 (Virginia Democratic Party). Publications that go beyond these informational limitations and

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- 1 provide additional biographical information, descriptions of candidates' positions on the
- 2 issues, or statements of party philosophy, however, do not qualify for the slate card
- 3 exemption. See Advisory Opinions 1978-09 (Republican State Central Committee of
- 4 Iowa) and 1978-89 (Withers) (slate card exemption does not apply to campaign material
- 5 that contained excess biographical data, outlined candidates' positions, criticized
- 6 incumbent officials, and included statements of party philosophy).

7 The Committee's newsletter includes candidate statements that inform voters of

8 the candidates' prior legislative accomplishments on specific issues and their plans to

9 pursue those issues in the office they are seeking. In one candidate statement entitled,

10 "Congressman Joe Sestak on Health Security," the narrative reads, "Upon being elected

11 to Congress in 2006, one of the first priorities I set was to address healthcare reform."

12 MUR 6088 Complaint (Attach, 1). The narrative then continued by listing his

13 accomplishments while serving on two Congressional Committees that deal with health

care. Id. (Attach. 1). Similar statements include: "Barack Obama on Economic

15 Prosperity;" "State Rep. Daylin Leach for State Senator on Education Equality;" "State

Representative Greg Vitali on Environmental Responsibility;" and "Dan Siegel for 4th

17 Ward Commissioner on Integrity." Id. (Attach. 1). Accordingly, the newsletter does not

qualify for the slate card exemption.

### 2. Volunteer materials exemption

Under the Act, a local committee's payment for campaign materials, including a newsletter, "in connection with volunteer activities . . . is not a contribution." 2 U.S.C. § 431(9)(B)(viii) and 11 C.F.R. §§ 100.87 and 100.147. To qualify for the exemption, a

state or local committee must pay for the newsletters under the conditions that: (1) the

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- 1 committee's payment for the campaign material is not for "general public communication
- 2 or political advertising," which includes direct mail; (2) the portion of the payment
- allocable to a federal candidate "must be paid from contributions subject to the
- 4 limitations and prohibitions of the Act;" (3) the committee's payment must not be paid
- 5 for from funds designated for a particular federal candidate by the donor; (4) campaign
- 6 materials must be "distributed by volunteers and not by commercial or for-profit
- 7 operations;" (5) the committee's payment must have been disclosed as a disbursement;
- 8 and (6) campaign materials must not be purchased either directly by a national committee
- 9 or with funds donated by the national committee to the state committee. 11 C.F.R. §§
- 10 100.87(a)-(e), (g) and 100.147(a)-(e), (g).

Based on the available information, the newsletter appears to satisfy the regulatory requirements necessary to qualify for the volunteer materials exemption. First, the newsletter was not a general public communication or political advertising distributed via broadcast, newspaper, magazine, billboard, or direct mail. 11 C.F.R. §§ 100.87(a) and 100.147(a). Indeed, the newsletter was distributed by local volunteers. MUR 6088

Response at 2. Second, a review of the Committee's state campaign finance report

17 indicates that the Committee had sufficient federal eligible funds at the time of the

disbursements for the newsletters at issue. Specifically, the newsletters cost \$1,480,60 to

19 produce while pre-election reports with the state's campaign finance authority revealed

20 the Committee had \$12,607.99 in total available funds at the time the newsletters were

21 produced and that its receipts consisted of funds received from individual donors in

- amounts less than the federal limit of \$2,300.2 Third, Complainant and Respondent 1
- provide no information, and there is no other available information that suggests that the 2
- 3 Committee used funds designated for a particular federal candidate. Finally, Respondent
- maintains that because it does not raise funds on behalf of federal candidates, it is under
- no obligation to report disbursements in accordance with the Act. Id. 5
- Accordingly, we recommend the Commission find no reason to believe that the 6
- Haverford Township Democratic Party violated the Act by using nonfederal funds for 7
- newsletters that qualify as exempt volunteer materials pursuant to 2 U.S.C. § 8
- 431(9)(B)(viii). 9

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### 3. Disclaimer

The Act requires a disclaimer "when any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a 12 clearly identified candidate . . . " 2 U.S.C. § 441d(a). See also 11 C.F.R. § 110.11(a)(2) 13 (requiring a disclaimer for "All public communications . . . by any person that expressly 14 advocate the election or defeat of a clearly identified candidate."); 11 C.F.R. § 15 110.11(a)(3) (requiring a disclaimer for "All public communications . . . by any person 16 that solicit any contribution."). A public communication includes any broadcast, cable, 17 or satellite communication, telephone bank, mass mailing, or general public political 18 advertising. 11 C.F.R. § 100.26. 19

20 The disclaimer must be presented in a "clear and conspicuous manner" in order to give the reader, observer, or listener "adequate notice of the identity of the person or 21

<sup>&</sup>lt;sup>2</sup> The exemption that campaign materials must not be purchased either directly by a national committee or with funds donated by the national committee to the state committee does not apply to the newsletter at issue because Committee records indicate that Respondent used its own funds for the newsletter.

- political committee that paid for and, where required, that authorized the
- 2 communication." 11 C.F.R. § 110.11(c)(1). A disclaimer, if paid for and authorized by a
- 3 candidate or an authorized committee of a candidate, must clearly state that the
- 4 communication has been paid for by the authorized political committee. 11 C.F.R. §
- 5 110.11(b)(1).

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### a. Newsletter disclaimer

7 Commission regulations provide that for exempt activities under 11 C.F.R. §§

- 8 100.140 (slate cards and sample ballots), 100.147 (volunteer activity for party
- 9 committees), 100.148 (volunteer activity for candidate), or 100.149 (voter registration
- 10 and get-out-the-vote activities for presidential candidates), "the disclaimer does not need
- 11 to state whether the communication is authorized by a candidate, or any authorized
- committee or agent of any candidate." 11 C.F.R. § 110.11(e).
- 13 Because the Committee's newsletter qualifies as exempt volunteer activity under
- 14 11 C.F.R. §§ 100.87 and 100.147, see supra Part II.B.2, it need only meet the disclaimer
- 15 requirements under 11 C.F.R. § 110.11(e) (stating "the disclaimer does not need to state
- whether the communication is authorized by a candidate, or any authorized committee or
- 17 agent of any candidate."). Respondent therefore maintains that the statement, "Paid for
- 18 by the Haverford Township Democratic Committee," meets the disclaimer requirements
- 19 under the Act. MUR 6088 Response at 1.
- 20 As Respondent notes, the disclaimer is at the bottom of the first page of the
- 21 newsletter and states, "Paid for by the Haverford Township Democratic Committee" in at
- 22 least 12-point font, which meets the Act's disclaimer requirements. Accordingly, we

- recommend the Commission find no reason to believe that the Haverford Township
- 2 Democratic Party violated 2 U.S.C. § 441d(a).

### b. Website disclaimer

- The Commission's definition of "public communication," which requires a
- 5 disclaimer, includes "paid Internet advertising placed on another person's website, but
- does not encompass any other form of Internet communication." 71 Fed Reg. 18,589
- 7 (Apr. 12, 2006).

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- 8 The Commission specifically concluded that the definition of "public
- 9 communication" should not be expanded to encompass state, district, and local party
- 10 committee websites. Id. at 18.597. In the rulemaking, the Commission noted that "State.
- 11 district, and local party committee websites are not predominantly focused on Federal
- 12 elections" and that content changed frequently so that "a hyperlink to a Federal candidate
- 13 from the home page of a State party committee Web site one day" might be removed the
- 14 next. Id. The rule excluding state, district, and local committee websites, therefore,
- 15 avoided the "difficult, if not impossible" task of identifying and severing the costs of the
- 16 federal portion of a state committee website. Id.
- 17 Because Respondent's website and online contribution form do not constitute
- 18 public communications, they are not "predominantly focused on Federal elections." 71
- 19 Fed. Reg. at 18,597. Accordingly, we recommend the Commission find no reason to
- 20 believe that the Haverford Township Democratic Party website violated the Act's
- 21 disclosure requirements. 71 Fed. Reg. at 18,589.

### 22 III. RECOMMENDATIONS

23 1. Find no reason to believe that Haverford Township Democratic Committee violated 2 U.S.C. § 441i(b).

1 2 3		2.	Find no reason to believe that Haviolated 2 U.S.C. § 441d(a).	sverford Township Democratic Committee
5		3.	Approve the attached Factual an	d Legal Analysis.
6 7 8		4.	Approve the appropriate letters.	
9 10		5.	Close the file.	
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12 13				Thomasenia P. Duncan General Counsel
14 15				Harley Swith
16 17	Date		BY:	Kathleen Guith
18				Deputy Associate General Counsel
19 20				for Enforcement
20 21				$\mathcal{M} / \mathcal{M} / \mathcal{M}$
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23				Mark Shonkwiler
24				Assistant General Counsel
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28				Phillip A. Olaya
29				Attorney





## Haverford Township Democratic Party





## **Register to Vote NOW!**

Registration Deadline: Wed. October 6<sup>th</sup>, 2008 Election Day: Tuesday, November 4<sup>th</sup>, 2008

VOTE



## Democratic Values

Fairness, Freedom, Equality, Responsibility, Integrity, Security

See inside for more on Democratic candidates: Baruck Obama Joe Sestak Dayfin Leach Greg Vitali



Send forms to or register to vote in person at the Delaware County Voter Registration Office, Government Center Building, 201 W. Front St., Media, PA 19063.
Use the same form for new registrations, change of address, or change of party.

If you need more voter registration forms or absentee ballot applications, you can:

- Contact your Democratic committee person (see back page)
- Download from the Haverford Democrats website Voter Info page: www.HaverfordDemocrats.com/Voter
- Pick up forms at federal, state and municipal offices, State Stores and libraries

Delaware County Voters can check registration - call the Voter Registration Office: 610-891-4659. Online Polling Place Locator - go to <a href="https://www.HaverfordDemocrats.com/Voter">www.HaverfordDemocrats.com/Voter</a>.

Absentee Ballots



Register to vote for the Democratic candidates who represent your values and will improve our community!



Paid for by the Haverford Township Democratic Committee www.HaverfordDemocrats.com

To SUBSCRIBE to our email list, send an email to email@haverforddemocrats.com
To CONTRIBUTE securely online, go to: www.HaverfordDemocrats.com/Contribute



## Democratic Values

Fairness, Freedom, Equality, Responsibility, Integrity, Security

## For President: Barack Obama on Economic Prosperity



"i believe that America's free market has been the engine of America's great progress. It's created a prosperity that is the envy of the world. It's led to a standard of living unmatched in history. From CEOs to shareholders, from financiers to factory workers, we all have a stake in each other's success because the more Americans prosper, the more America prospers."

When elected, Obama will provide a tax cuts for working families, eliminate income taxes for seniors making less than \$50,000, fight for fair trade, invest in a clean energy economy and create 5 million new green jobs, and provide tax relief for small businesses and start up companies.

www.BarackObama.com

### Congressman Joe Sestak on Health Security



## Sestak for Congress Leadership with a Vision





"Upon being elected to Congress in 2006, one of the first priorities I set was to address healthcare reform. For our District, I fought to serve on two Congressional Committees that deal with health issues, from which I have been able to craft legislation and be a leading advocate for health care reform. Among the successes have been expanding health care for seniors, cutting costs for Medicare prescription drugs, increasing funding for veteran's health care, expanding funding for cancer research and treatment, providing \$29

million for treatment of autism, and supporting legislation to prevent insurance companies from denying coverage to people with pre-existing conditions."

www.SestakForCongress.com







"There is perhaps no issue that is more important to our State and region than providing quality education to every child. As a member of the House Education Committee in Harrisburg, I introduced legislation that successfully increased the amount of money available for tutoring programs and raised the eligible age from 9th grade to 12th grade. I was proud to strongly support Governor Rendell's efforts to provide universal access to pre-school for all of Pennsylvania's children. I also fought for full-day kindergarten and smaller class sizes K-3, as well as full funding of special education. As your State Senator I will continue to

enable Haverford Township Schools and all public schools to have the funding and resources they need to give all our children the education they deserve."

www.VoteDavlin.com

State Representative Greg Vitali - E

Environmental Responsibility



# Greg Vitali State Representative



"I have been instrumental in Haverford Township's acquisition of the 209 acre
Haverford State Hospital site. Conservation of open space and development of this
site for use of Haverford Township realdents is one of my proudest achievements. I
secured state funding for mandated environmental studies at the former hospital
site as well as grant dollars for Haverford Township to develop its own climate
change action plan."

www.VoteVitali.com

### Dan Siegel for 4 Ward Commissioner - Integrity



"As a long time Haverford Township resident I am running for 4<sup>th</sup> Ward commissioner in the special election on Nov. 4<sup>th</sup> 2008. My goals are to restore integrity and accountability to the Republican-dominated Board of Commissioners, to encourage businesses to open and thrive in the Township, to make the Township more responsive to the average citizen, to end the favoritism that has plagued the Township for decades, and to speak out on issues that have long been ignored. In the past, the Commissioners have been reluctant to take the bold steps necessary to move the Township forward and to assure that every citizen is treated equally.

It's time for Haverford Township to be the world-class community it aspires to be. I am a leader in numerous organizations and will bring the same drive and commitment to my duties as a Commissioner. "

www.ElectDanSiegel.com





## Haverford Township Democratic Party



Haverford Township Day on Saturday, October 4, 2008 - Walk in the parade with the Haverford Township Democratic Party and our Democratic candidates, Joe Sestak, Daylin Leach, Greg Vitali and Dan Siegel. Email Bob Stump chair@haverforddemocrats.com for more information or come to Manoa Shopping Center by 10 AM.

Presidential debate parties - Check our website <u>www.HaverfordDemocrats.com</u> for dates and times or contact Tim Thomson-Hohl for more information, 2-1-committee@haverforddemocrats.com.

### Want to Volunteer? Want a Lawn Sign? Just Contact Us!

If you want to help with any campaign or would like to have a lawn sign for Obarna, Sestak, Leach or Vitali, just contact your Haverford Township Democratic Party committee person or ward leader! If you have some time, please help with: Canvassing in your neighborhood, Be an Election Day Democratic Greeter, Lawn Sign Distribution, Get Out The Vote (GOTV) Phone Calling, Graphic Deelgn, Web Development, and Communications.

### Haverford Township Democratic Party Committee

### **Haverford Township Democratic Officials**

Cheir: Bob Stump, cheir@heverlordern Vice-Cheir: Lerry Abel, <u>vicecheir@hever</u> Becretary: Melless Essiman, <u>secretary</u>

sourer, Stephen Schultz, <u>Irraeurer/Dheverforddemocrate.com</u>

### **Ward 1 Democratic Committee**

ri Leader: Lauren Feldman, <u>ward i</u> Joshua Young & Lauren Feldman,

1-1: Joshun Yöung & Lauren Feldman, 1: 1-2: Eric Ring & Tom Shiller, 1:3-commit 1-3: Contest Ward Leader 1-4: Joanne 1884, 1<u>-1-commitmenthisseri</u> 1-8: Jeff Hodgson & Jene Keamey, <u>1-8-co</u>

### **Ward 2 Democratic Committee**

Ward Leader: Melt Birch, <u>sangitionaler@house</u> 2-1: Ben Darson & Timothy Thomson-Holl, <u>2</u> 3-2: Mary G. Replice & John Simpson, <u>2-3-as</u> 3-2: Jeromy Catalio, <u>2-3-assembles@house</u> 3-4: May Glascott & Andre & Ameni, <u>2-4-ass</u>

Ward 3 Democratic Committee rd Lander: Mike McG

### Ward 4 Democratic Committee

rd Loader: Torn Tarks, <u>wast</u> : Bayro Schutz & Ched Goth

4-1: Bayes Schalt & Chad Gomma-4-2: Rich Diffelos & Bob Sharey, 4-2-4-3: Thomas Gillon & Sandy Hubble 4-4: Joan Tota & Ton Tota, 4-4-0

### Ward 5 Democratic Committee

Word Leader: Brie Sr. S-1: Water Hert, Ed-S-2: Juli Powers, S-2: S-2: Lerry Abel, S-3: S-4: Brie Branstein, S.

### ford 6 Democratic Committee

rd Looder: Paggy Moracl Montgeo Prugler & Pag

6-2: David Henry, <u>8-2</u> 6-3: Bruco Yesgur, <u>8</u>-

### Ward 7 Democratic Committee

### **Ward 8 Democratic Committee**

Ward Leader: Stove Schaltz, <u>yandib</u> 5-1; Laurence Anste, Sr. & Rob Sing 5-2: Kate Smith & Stove Schultz, <u>8.3</u> 5-3: Allen Polaty & Linde Wellion, <u>8</u> 5-4: Meureen McGuire, <u>8</u>-4-commits

### **Ward 9 Democratic Committee**

Ward Leader: Brian Kermedy, 35 8-1: Pelly Leasner & Brian Kenne 9-2: Contact Ward Leader

5-2: Central Ward Leader 5-3: Juli Chrin & Buson Cossenall, <u>9-3-a</u> 8-4: Mary Leader & Brian Werner, <u>9-4-a</u>

Committee Listed as of Sept 18, 2 Online Polling Place Locator - go s To view the dataled Haverford Township www.Heverlos/Compania.com/falor or s or - go to <u>more i imariani Domacrata.</u> ournahip Wardi Precinsi map, coo link on <u>fator</u> or the Haverbra'l Tournahip.org webs

